

Contracting

“For The Rest of Us”

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Contracting for the Rest of Us

Contracting process can be broken down into three stages:

- **M**ission support planning (“Pre-award” or “Acquisition planning”)
- **M**ission strategy execution (“Contract award”)
- **M**ission Performance Assessment (“Administration”)

The focus is on the “**M**” in Contracting!

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Mission Support Planning

Mission support planning is the up-front process of determining strategy for effectively meeting customer needs

- Focuses on business, technical, management approaches for meeting customer requirements within resource constraints
- Involves selecting best contracting strategies for meeting objectives and requirements

Contracting processes and associated focus areas involved in acquisition planning:

- Understanding customer requirement
- Determining degree to which commercial marketplace can meet the requirement
- Considering socioeconomic requirements
- Selecting best acquisition method and contract type

Customer Requirement

Requirement document (the “PR”) conveys customer’s needs to

contracting office

- **Specific form depends on service/agency and contract writing system**
- **As business advisor, contracting professional needs to get involved early in process to provide guidance**

Requiring activities must recognize importance of properly drafted

requirement documents

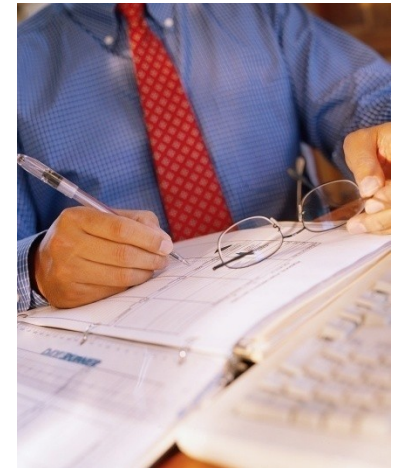
- **Assist contracting personnel in determining if requirement can be satisfied by commercial supply or service (preferred)**
- **Help develop widest range of competition ... lowers prices and increases performance!**

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Mission Support Planning

Performance Work Statement (aka “statement of work”)

- **Describes supply or service being procured in *performance terms***
- **For simple acquisitions, description on PR usually sufficient to describe supply or service**
- **For complex acquisitions, PWS may be dozens of pages!**
- **Potential offerors should not be told "how" to fulfill the requirement but rather the "outcome(s)" expected**



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Mission Support Planning

The Commercial Marketplace

Market Research -- Exploring variety of potential sources for meeting

Government requirement

- **Effective market research leads to:**
 - **Reduced acquisition costs**
 - **Reduced cycle times**
 - **Access to greater variety of products, services, technologies**

Commercial Item -- Supply or service regularly used in course of

normal business operations in private sector

- **Federal Acquisition Regulation (the “FAR”) requires use of commercial items whenever possible**
- **Increases pool of potential suppliers → Lower prices**



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Mission Support Planning

Socioeconomic Requirements

When contracting officer receives PR, may have to consider capability of mandatory or "preferred" sources of supply

FAR policy is to promote contracting opportunities for:

- Small businesses**
- Historically underutilized business zone (HUBZone) small businesses**
- Small disadvantaged businesses**
- Women-owned small businesses**
- Service-disabled veteran-owned small businesses**
- Federal Prison Industries (FPI)**
- Businesses employing the blind and severely disabled**
- ...and more**

That's a lot for the contracting officer to keep track of!

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Mission Support Planning

Acquisition Methods

Specific procurement method depends on complexity of the acquisition

- **Part 12: Commercial item contracting**
- **Part 13: Simplified procedures (<\$100K; <\$5.5M for commercial items)**
- **Part 14: Sealed bidding (less than 4% contract actions in DoD)**
- **Part 15: Contracting by negotiation**

Methods range from simple credit card purchases (<\$3K) to complex contracting arrangements spread over many years!

Depending on nature of the acquisition, procedures from multiple FAR parts can come into play

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Mission Support Planning

Contract Types

Contracts can be ‘fixed-price’ or ‘cost-reimbursement’

Fixed-price contracts:

- Contractor paid a firm price ... risk of performance squarely on contractor’s shoulders
 - If the contractor is efficient and reduces cost of performance, can earn greater profit
 - If cost of performance exceeds fixed contract price, contractor can lose money

Some fixed-price contracts contain *incentive arrangements* for sharing the risk between Government and contractor

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Mission Support Planning

Contract Types, cont.

Cost reimbursement contracts:

- **Contractor paid for all costs incurred IAW contract terms**
- **Most performance risk shifted to Government**
 - **If costs incurred greater than expected, contractor may not be required to deliver all supplies/services stated in contract**
 - **Contractor still earns fee stated in the contract**
 - **Only expected to give "best efforts" vs. specific deliverable (as is case w/fixed-price contracts)**

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Mission Strategy Execution

Mission strategy execution follows the mission support planning phase.

After the contracting officer has ...

- **Accepted the customer's requirement**
- **Performed market research to determine marketplace's ability to support requirement**
- **Decided on acquisition approach**

... he/she must decide on acquisition method to:

- **Publicize the requirement**
- **Evaluate offers received in response to solicitation**
- **Arrive at award decision**

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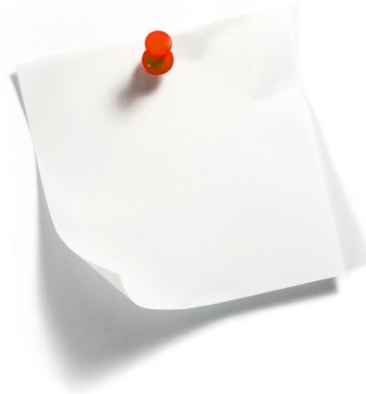
Mission Strategy Execution

Publicizing the Requirement

When Government exchanges information with potential suppliers, this improves their understanding of the requirement

Publicizing proposed contract actions:

- Increases competition at prime and sub-contractor levels**
- Broadens industry participation**
- Helps achieve federal socio-economic goals**



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Mission Strategy Execution

Proposed contract actions exceeding \$25K must be publicized using on-line government point of entry (FedBizOpps)

- **At least 15 days before formal contract solicitation is issued**

There are exceptions to requirement to publicize:

- **“Urgent and compelling” requirement (e.g., emergency fuel buy in combat zone)**
- **Only one responsible source**
- **Federal statute promoting use of specific source (e.g., Federal Prison Industries)**
- **Etc...**

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Mission Strategy Execution

Speaking of the solicitation document ... it can be rather lengthy! The “Uniform Contract Format” contains 13 sections:

- Section A Solicitation/Contract Form**
- Section B Supplies or Services And Price/Costs**
- Section C Description/Specification/Statement Of Work**
- Section D Packaging And Marking**
- Section E Inspection And Acceptance**
- Section F Deliveries And Performance**
- Section G Contract Administration Data**
- Section H Special Contract Requirements**
- Section I Contract Clauses**
- Section J List Of Attachments**
- Section K Representations, Certifications, Other Statements Of Offerors**
- Section L Instructions, Conditions, And Notices To Offerors**
- Section M Evaluation Factors For Award**

All 13 sections are included in solicitation package, but only A through J become part of final contract

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Mission Strategy Execution

Source Selection Considerations

Source selection is process for selecting offer that provides **best value** to the Government. The relative importance of the price of an item varies for different types of acquisitions. When the requirement is clearly defined and the risk of **price** is **low**, **price** will be the dominant factor in the source selection decision.



When the requirement is less defined and performance risk is greater, technical and past performance considerations become more important.

“Risk” is a primary determinant of the source selection strategy that the contracting officer employs.

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Mission Strategy Execution

Source Selection Considerations, Cont.

Purchases within 'micropurchase threshold' (\$3k)

- do not require contract clauses
- can be made against any offer considered "fair and reasonable"
- made by Government personnel outside of contracting field using Government-Wide Commercial Purchase Card

Purchases within 'simplified acquisition threshold' (\$100K/\$5.5M)

- utilize streamlined procedures (compared to high-value acquisitions)
- can be made using only three competitive quotes

Purchases above the SAT ('Major acquisitions')

- require more terms, conditions, and approvals
- "formal source selection procedures" required for multi-million dollar (and higher) contracts w/significant management and technical challenges

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Mission Strategy Execution

Price Analysis

Various methods for determining if price is “fair and reasonable” -



- **The existence of adequate price competition (two or more independent offers) in itself can establish price reasonableness**
- **Comparison of previously proposed and actual contract prices with current proposed prices for same or similar items**
- **Use of parametric estimating methods or ‘rough yardsticks’ (e.g., dollars per pound; horsepower).**

... the FAR lists seven methods in all.

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Mission Strategy Execution

Source Selection Considerations, Cont.

Price analysis focuses on bottom-line proposed price(s)

- But sometimes, a full-fledged *cost analysis* must be performed

Cost analysis is the evaluation of the separate cost elements and profit in a proposal

- Performed when not enough information for an effective price analysis AND no exemptions apply (e.g., overall cost <\$650K)

A cost analysis for a major acquisition can involve dozens (even hundreds!) of pages of data supplied by a contractor, and require DCAA support





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Mission Strategy Execution

Once the contracting officer has performed required analyses, obtained needed approvals, 'dotted all the i's' and 'crossed all the t's,' the contract can be awarded!

A couple of cautionary notes...

Contract bundling occurs when requirements are combined to achieve economies/efficiencies that come with large orders. However, bundled contracts can become too large for small businesses to bid. Contracting officers must justify “bundling” of contract requirements.

Requirements splitting occurs when a large acquisition is divided into two or more smaller ones to get below a contract threshold (prohibited by FAR). DoD requiring activities are responsible for providing the full extent of their requirements to contracting office as soon as available.

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Mission Performance Assessment

Mission Performance Assessment (“Contract Administration”) covers the period of contract performance. The contracting officer's duties include:

- Monitoring and assessing contractor performance
- Paying the contractor(s)
- Closing out the contract

The procurement contracting officer (“PCO”) typically stays on the contract over the entire course of mission performance assessment

- Known as "cradle to grave" contracting

Sometimes the PCO hands off responsibilities to an *administrative contracting officer* (ACO)

- More likely for large, complex systems acquisitions

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Mission Performance Assessment

Both Government and contractor are obligated to act in accordance with

terms and conditions laid out in contract

- **The contracting officer must closely monitor contract performance to ensure supplies and services delivered on time**
- **Extent of monitoring depends on complexity of requirement and if a commercial item**

A contracting officer representative (COR) may be assigned to monitor service contract performance

- **Submits reports to contracting officer identifying deficiencies**
- **Works with contracting officer and contractor to develop remedies**

The COR must never provide direction to contractor ... that's the contracting officer's job!

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Mission Performance Assessment

Careful monitoring of contract helps identify performance problems early on. A breach of contract is the failure (without legal excuse) to perform any promise that forms whole or part of a contract.



Every breach of a contract gives the injured party the right to pursue and collect damages.

The Government can be guilty of breach if it issues a unilateral change to a contract that is outside contract scope, or fails to disclose pertinent information that can affect performance (e.g., differing site conditions).

More often, the contractor is found to be in breach of contract when it does not fulfill its contract obligations or commits a fraudulent act

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Mission Performance Assessment

Contract Modifications

In a perfect world, Government contracts would *never* need any changes

In the real world of Government contracting, contract changes (modifications) happen all the time!

- Most modifications due to changes in original scope of contract requirements or routine administrative adjustments

Modifications may be unilateral (Government-directed) or bilateral (requiring concurrence of both parties)



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Mission Performance Assessment

Contract Closeout

Contracting officer must determine physical completion to begin close-out

Physical completion occurs when:

- **All required deliveries are completed, inspected and accepted**
- **All options have expired**
- **All contract payments complete**

Hot Issues in Contracting



- ✓ **Ethics**
- ✓ **Workforce Competency Assessment**
- ✓ **Contracting in contingency environment**
- ❖ **Competition**
- ❖ **Proper use of Interagency Agreements**
- ✓ **Data Integrity (FPDS-NG)**
- ❖ **Use of Award Fee/Incentive Fee Arrangements**
- ✓ **Unfinitized Contract Actions**
- ❖ **Contracting Policy for Services**
- ✓ **Contract Pricing**
- ✓ **Green Procurement/Green Purchasing**
- ✓ **Integrity of Purchase Cards**

Questions, anyone?

